



96-5

Federal Communications Commission
Washington, D.C. 20554

December 30, 2002

David Buchanan, Chairman
Region 5 700 MHz Regional Planning Committee
County of San Bernardino
777 E. Rialto Avenue
San Bernardino, CA 92415-0740

DOCKET FILE COPY ORIGINAL

Re: 700 MHz Regional Planning - Region 5 700 MHz Regional Plan

Dear Chairman Buchanan,

On April 17, 2002, you submitted a request for Commission review and approval of the proposed 700 MHz Regional Plan (Plan) for Region 5.¹ We have reviewed the Plan and identified three elements that must be revised. Accordingly, we are dismissing the instant request without prejudice. Please file a revised plan once these elements have been addressed as discussed below.

By way of background, the Commission's role in relation to the regional planning committees (RPCs) is limited to: (1) defining the regional boundaries; (2) requiring fair and open procedures, *i.e.*, requiring notice, opportunity for comment, and reasonable consideration; (3) specifying the elements that all regional plans must include; and (4) reviewing and accepting proposed plans (or amendments to approved plans) or rejecting them with an explanation.²

Evidence of successful coordination with adjacent regions. Requests for review and approval of 700 MHz regional plans or modifications thereto must include "evidence of how the plan had been successfully coordinated with adjacent regions."³ The Plan states that copies were sent to the adjacent regions, *i.e.*, Region 3 (Arizona), Region 6 (Northern California), and Region 77 (Nevada),⁴ but does not provide evidence of concurrence from these regions. We acknowledge that (a) the Plan states that adjacent regions are not as far along in the planning process as Region 5; (b) that the number of channels available to adjacent regions is over half of the total channels⁵ (with the exception of the Las Vegas, Nevada area); (c) that the Region 5 border regions are sparsely populated and generally the NPSPAC 821/866 MHz band frequencies are not built out, and therefore [adjacent regions] should be able to satisfy voice and narrowband data requests with Region 5; and (d) that Region 5 pledges to work with Nevada to resolve any issues.

In view of these circumstances, we would agree that the Region 5 RFC's actions appear reasonable and taken in good faith. Nonetheless, absent evidence of how the Plan was successfully

¹ Letter from David Buchanan, Chairman, Region 5 700 MHz RPC, to William F. Caton, Acting Secretary, Federal Communications Commission, filed Apr. 17, 2002 (Request) (submitting the Region 5 700 MHz Regional Plan on behalf of the Region 5 700 MHz Regional Planning Committee (Region 5 RPC)).

² See *The Development of Operational, Technical and Spectrum Requirements for Meeting Federal, State and Local Public Safety Agency Communication Requirements through the Year 2010*, WT Docket No. 96-86, *First Report and Order and Third Notice of Proposed Rulemaking*, 14 FCC Rcd 152, 195 ¶ 87 (1998) (*First Report and Order*).

³ See 47 C.F.R. § 90.527; see also *First Report and Order*, 14 FCC Rcd at 194 ¶ 84.

⁴ Plan at 11 § 9.

⁵ If this provision is retained, the plan must clarify whether "half of the total channels" refers to half of the narrowband General Use channels or all 700 MHz band channels, *etc.*

In view of these circumstances, we would agree that the Region 5 RFC's actions appear reasonable and taken in good faith. Nonetheless, absent evidence of how the Plan was successfully coordinated with adjacent regions, the Plan must be rejected because the Commission expressly clarified this requirement for 700 MHz regional planning.⁶ We note in this connection that our records reflect that Regions 3 and 6 became active subsequent to the filing of the Request and that Region 27 has appointed a convener.

Future planning process--dispute resolution Regional planning committees are required to provide a detailed description of the future planning process, including the process for dispute resolution. We note that the Plan includes intra-regional dispute provisions, but it does not include a process for inter-regional disputes.⁷ We further note that to meet this requirement, RPCs will need to reach inter-regional coordination agreements with all adjacent regions. We are enclosing a "model" dispute resolution agreement for inter-regional disputes for your consideration; we encourage RPCs to reach inter-regional agreements, as appropriate, using similar provisions. The signed agreements should accompany the revised plan.

Adequate notice and opportunity for all eligible entities RPC membership information The Commission expects RPCs to ensure that their committees are representative of all public safety entities in their regions by providing (1) reasonable notice of all meetings and deliberations, (2) opportunity for comment by all interested parties, and (3) reasonable consideration of the views expressed.⁸ In this connection, plans must include an explanation of how all eligible entities within the region were given notice, an opportunity to participate in the planning process and to comment and have those comments reasonably considered.⁹ For the initial meeting called by the convener to form the RPC and hold elections, the Commission required at least 60 days for appropriate public notifications.¹¹

The Plan needs to provide a more complete discussion of how the requirements for fair and open procedures are satisfied. Specifically, the Plan does not adequately identify the parties that participated in the development and adoption of the Plan (we cannot ascertain the Region 5 RPC's membership from the hand-written slip-in sheets attached to the Plan).¹² Accordingly, the Plan must be revised to identify and include the organization(s) that were represented in the planning process. Also, indicate or describe which "jurisdictions" have voting status.

The Plan should include a statement concerning whether there was a 60-day notice for the initial planning meeting. Provide copies of meeting notices and describe the publications in which the meeting notices were placed, as well as the publication dates. The Plan should include any other information necessary to establish that these efforts reasonably gave all eligible entities notice of each meeting. Specifically, the Plan states that "the CPRA CommLink (California Public-Safety Radio Association

⁶ The Commission clarified this requirement based on "lessons learned" from over ten years of 800 MHz regional planning. See, e.g., *First Report and Order*, 14 FCC Rcd at 193 ¶ 83.

⁷ 47 C.F.R. § 90.527(a)(7).

⁸ Plan at 5 § 5.6.

⁹ *First Report and Order*, 14 FCC Rcd at 193-4 ¶ 84. RPCs must promptly adopt operating procedures that "ensure that all entities will be given reasonable notice of all committee meetings and deliberations." *Id.* at 195 ¶ 86.

¹⁰ *Id.* at 193 ¶ 84.

¹¹ *Id.* at 195 ¶ 86 n.220.

¹² Plan at Appendix A.

newsletter] is sent monthly to nearly all public safety agencies and is considered the primary notification method."¹³ Based on the information supplied, we are unable to determine whether this notification method is reasonably calculated to provide actual notice to all eligible entities within the region.

The Commission outlined examples of the steps to be undertaken to encourage and accommodate all eligible entities to participate in the planning process. These included a description of steps taken to hold meetings in various parts of the region, copies of meeting notices and publications in which the notices were placed, and whether all submissions/materials were available to each member.¹⁴ In addition, the Plan should describe whether any outreach effort was made to tribal governments in the region and whether state and local officials responsible for National Security and Emergency Preparedness within the region were invited to the initial or subsequent meetings.

We ask that you summarize the deliberations on the "draft plan" that was subsequently presented to the RPC.¹⁵ The second page of Appendix B to the Plan is undated and appears to be a draft of meeting minutes that indicate a proposed narrowband, frequency allotment-plan was accepted.

Additional notes. Relative to Section 5.5, Mexico Border Issues, please be advised that as a general matter, the formulation and adoption of sharing agreements with Mexico is a matter under the cognizance of the United States Department of State. Accordingly, the third sentence in this section, which states that "Region 5 request input into any spectrum sharing agreements with Mexico" falls outside of the scope of the regional planning process and should be deleted from the revised Plan. In addition, we recommend the addition of two sentences at the end of this section to more clearly identify a licensee's obligation under the Commission Rule as follows: "Public safety licenses are granted subject to the conditions as set forth in 47 C.F.R. § 90.533. Public safety transmitters operating within 120 km or 75 miles of the Mexican border must accept any interference that may be caused by operations of UHF television broadcast transmitters in Mexico and that conditions may be added during the term of the license if required by the terms of international agreements between the United States and the government of Mexico, as applicable, regarding the non-broadcast use of the 764-776 MHz and 794-806 MHz bands."

Finally, we note that the Plan addresses only the narrowband General Use channels and that the Region 5 RPC intends to address the wideband General Use channels in the future." When the RPC does so, keep in mind that the Plan must be modified pursuant to Section 90.527(b) of the Commission's Rules.¹⁶

¹³ Plan at 2 § 4

¹⁴ *First Report and Order* at 93 ¶ 84

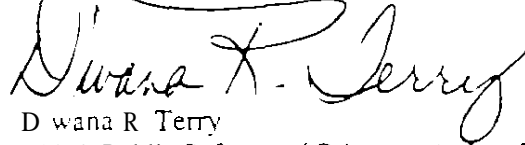
¹⁵ See, e.g., Region 5 (Southern California) 700 MHz Public Safety Planning Committee Announces Third Meeting, *Public Notice*, 17 FCC Rcd 891 (WTB PSPWD 2002) (agenda includes "[v]ote on approval of the draft plan").

¹⁶ Plan at 13 § 11

¹⁷ 47 C.F.R. § 90.627(b), which reads as follows: "Modification of regional plans. Regional plans may be modified by submitting a written request The request must contain the full text of the modification, and must certify that successful coordination of the modification with all adjacent regions has occurred and that all such regions concur with the modification."

Should you have **any** questions concerning this matter, please contact Ms. Jeannie Benfaida at 202-418-2313, email jbenfaid@fcc.gov. This action is taken under delegated authority pursuant to Sections 0.131 and 0.331 of the Commission's Rules. 47 C.F.R. §§ 0.131, 0.331.

FEDERAL COMMUNICATIONS COMMISSION



Dwana R. Terry
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Enclosure

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*inter-Regional Coordination Procedures for Resolution of Disputes
That May Arise Under FCC Approved Plans*

I. INTRODUCTION

1. This is a mutually agreed upon inter-Regional Coordination Procedures Agreement (Agreement) by and between the following 700 MHz Regional Planning Committees. [list regions here.]

II. INTER-REGIONAL COORDINATION AGREEMENT

a. The following is the specific procedure for inter-regional coordination which has been agreed upon by Regions [xx], and which will be used by the Regions to coordinate with adjacent Regional Planning Committees.

- a. An application filing window is opened.
- b. Applications by eligible entities are accepted.
- c. An application filing window is closed after appropriate time interval.
- d. Intra-regional review and coordination takes place, including a technical review resulting in assignment of channels.
- e. After intra-regional review, a copy of the frequency-specific application including a definition statement of proposed service area shall then be forwarded to the adjacent region(s) for review.¹ [Note: An agreed upon format for the exchange of data should be stated herein.] This information will be sent to the adjacent regional chairperson(s) by a next day delivery system.
- f. The adjacent region reviews the application. Where unconditional concurrence exists, a letter of concurrence shall be sent, via next-day delivery system, to the initiating regional chairperson within sixty (60) calendar days.

(1) If only partial or non-concurrence exists, a working group comprised of representatives of the two regions shall be convened within thirty (30) calendar days. The

¹ Service area shall normally be defined as the area included within the geographical boundary of the applicant, plus three (3) miles. Other definitions of service area shall be justified with an accompanying *Memorandum of Understanding (MOU)* or other application documentation. Should a proposed service area extend into an adjacent Public Safety region(s), then the proposed service area must be approved by the affected regions.

■
working group shall then **report** its findings within thirty (30) calendar days to the regional chairperson via next-day delivery system. Findings may include, but not be limited to:

- (i) Unconditional concurrence;
- (ii) conditional concurrence contingent upon modification of applicant's technical parameters; or
- (iii) partial or total denial of proposed frequencies due to inability to meet co-channel/adjacent channel interference free protection to existing licensees within the adjacent region.

(2) If resolution is unobtainable by the working group, then the matter shall be forwarded for evaluation to the four regional frequency advisor(s). These frequency advisors will, within thirty (30) calendar days, report their recommendation(s) to the regional chairpersons via next-day delivery system.

"
c. Where adjacent region concurrence has been secured, and the channel assignments would result in no change to the region's currently Commission approved channel assignment matrix, the initiating region may then advise the applicant(s) that their application may be forwarded to a frequency coordinator for processing and filing with the Commission.

h. Where adjacent region concurrence has been secured, and the channel assignments would result in a change to the region's currently Commission approved channel assignment matrix, then the initiating region shall file with the Commission a *Petition to Amend* their current regional plan's frequency matrix, reflecting the new channel assignments, with a copy of the *Petition* sent to the adjacent regional chairperson(s).

1. Upon Commission issuance of an **Order** adopting **the** amended channel assignment matrix, the initiating regional chairperson will send a courtesy copy of the **Order** to the adjacent regional chairperson(s) and may then advise the applicant(s) that they **may** forward their applications to the frequency coordinator for processing and filing with the Commission.

111. CONCLUSION

3. **IN AGREEMENT HERETO.** Regions { } do hereunto set their signatures the day and year first above written.

Respectfully,

[all signatories to agreement]

Date: _____